IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8659 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANJAR NAGARPALIKA - Petitioner(s)

Versus

COLLECTOR & 4 - Respondent(s)

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Appearance :

MR YS MANKAD for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1, 5,
MR NL RAMNANI for Respondent(s) : 2,
MR PH PATHAK for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/11/2005

ORAL JUDGMENT

In the present petition, the petitioner Anjar Municipality has challenged the order dated 28th July 1997 passed by the Collector, Kutch as upheld by the order

dated 16.5.98 passed by the Director of Municipalities, State of Gujarat.

2. Anjar Municipality has decided to give on lease certain land bearing city survey No. 3500. A private person had questioned such a decision. The Collector, set aside the action of the Anjar Municipality by his order dated 28.7.97. His decision was upheld by the Director of Municipalities. The main ground on which the Collector was pleased to interfere with the resolution of the petitioner Municipality was that the land in question did not belong to the Municipality and it was a Government land. To come to such a conclusion, the Collector had relied on certain documents such as city survey property card, etc.

3. Learned advocate Shri Mankad appearing for the petitioner Municipality has submitted that there is voluminous evidence to suggest that the land is vested in the Municipality and in exercise of powers under section 65 of the Municipalities Act and subject to the limitations provided therein, it was open for the Municipality to deal with the land in accordance with law. He pointed out that there was a notification issued

by the Kutch State on 5th February 1951 by which boundaries of the Anjar Municipality were ear-marked. He submitted that this notification would show that the land in question is a land belonging to the Municipality. He further submitted that in any case if there is a dispute about the ownership of the land in question, the same has to be decided under section 37 of the Bombay Land Revenue Code and not by way of proceedings under section 258 of the Municipalities Act.

4. Upon perusal of the impugned orders passed by the Collector and the Director of Municipalities, it would appear that the notifications dated 5th February 1951 reliance on which was sought to be placed by the petitioner has not been taken into account. It is not clear whether such a notification was placed before the Collector at all or not. In the interest of justice, therefore, it would be appropriate to remand the proceedings before the Collector for fresh consideration, hearing and disposal after permitting the petitioner to produce the above mentioned notification and additional material as may be found necessary and granting permission to the petitioner to be heard on this aspect of the matter.

5. For the above purpose, the impugned orders passed by the Collector and the Director of Municipalities are quashed and the proceedings are remanded to the Collector for fresh hearing and disposal in accordance with law. The same may be done expeditiously. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)